

STATE OF MICHIGAN  
COURT OF APPEALS

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JENNIFER ELAINE MUZZALL,

Plaintiff-Appellant,

v

D & L, INC., d/b/a BUMPER'S OF  
PRUDENVILLE, a/k/a BUMPPER'S OF  
PRUDENVILLE,

Defendant-Appellee.

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UNPUBLISHED

February 6, 2007

No. 272871

Roscommon Circuit Court

LC No. 05-725528-NO

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) in this premises liability action involving a slip on a patch of ice on concrete outside the exit from defendant's business. Plaintiff fails to show error by the trial court in concluding that the condition was open and obvious. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." Invitors are not absolute insurers of the safety of their invitees. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 614; 537 NW2d 185 (1995). "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp, Inc.*, 464 Mich 512, 516; 629 NW2d 384 (2001). The duty generally does not encompass warning about or removing open and obvious dangers unless the premises owner should anticipate that special aspects of the condition make even an open and obvious risk unreasonably dangerous. *Id.*, p 517. Whether a hazardous condition is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger and risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).

Plaintiff's testimony concerning the size of the icy area and her ability to see it after her fall upon exiting support defendant's contention that an average person with ordinary intelligence would have discovered the danger and risk presented upon casual inspection. Plaintiff did not testify that the ice could not have been seen before the fall. She only testified

that she did not see the ice as she entered defendant's restaurant and did not know whether it was there at that time. Because plaintiff failed to present evidence to create a genuine issue of material fact concerning whether the ice in this particular case was not visible upon casual inspection, the trial court did not err in granting defendant's motion.

Affirmed.

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald

/s/ Pat M. Donofrio